

BPT.12825

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**PHYLECIA MULLEN**

**v.**

**FREER TRUCKING, INC. and  
ZACHARY BERNARD MOSES**

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**CIVIL ACTION NO. 6:22-cv-00031**

**DEFENDANT, FREER TRUCKING, INC., NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **FREER TRUCKING, INC.**, Defendant in the above matter, and file this their Notice of Removal under 28 U.S.C. §§ 1441 and 1332(a).

**I.  
BACKGROUND**

1. Plaintiff sued the Defendants in the 241st District Court, Smith County, Texas alleging serious injuries from an automobile collision.

2. Defendant **FREER TRUCKING, INC.**, (hereinafter referred to as “Defendant Freer”) was served on or about December 28, 2021. This Defendant has filed this Notice of Removal within the time period required. 28 U.S.C. §1446(b).

3. Plaintiff PHYLECIA MULLEN is a resident of Texas and domiciled in Smith County, Texas.

4. Defendant, Zachary Bernard Moses is a resident of Arkansas and domiciled in Union County, Arkansas.

5. Defendant Freer Trucking, Inc. is corporation incorporated under the laws of the State of Arkansas with its corporate office and principal place of business in Arkansas.

6. Plaintiff's Original Petition, filed contemporaneously herewith, indicates that Plaintiff intends to conduct discovery according to Discovery Level 3.

## **II. BASIS FOR REMOVAL**

7. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because Plaintiff is a citizen of the State of Texas; Defendant Zachary Bernard Moses is a citizen of the State of Arkansas, and Defendant Freer Trucking, Inc. is an Arkansas corporation with its principal place of business in Arkansas.

8. For diversity purposes, a person is considered a citizen of the state where that person is domiciled. Additionally, for diversity purposes, a corporation is a citizen of both the state in which it was incorporated and the state in which it has its principal place of business. 28 U.S.C. § 1332(c)(1). For Defendant Freer Trucking, Inc., this test implicates the State of Arkansas.

9. Because the Plaintiff does not share citizenship in any state with either Defendant Zachary Bernard Moses or Freer Trucking, Inc., removal is proper on diversity grounds.

10. The Defendant is now, and were at the time the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332. Accordingly, because the notice of removal was filed within thirty days after the receipt of a copy of the initial pleading setting forth the claim for relief this removal is proper and timely under 28 U.S.C. § 1446(b).

11. The amount in controversy in this action, exclusive of interest and costs, is the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00). *See* Plaintiff's Original Petition, Paragraph I. Plaintiff alleges damages that "greatly exceeds the minimum jurisdictional requirement" of the state District Court. *See* Plaintiff's Original Petition, Paragraph III.

12. The United States District Court for the Eastern District of Texas, Tyler Division, embraces Smith County, Texas, the place where the state court action was filed, and is pending in the 241<sup>st</sup> Judicial District Court. The address for the 241st Judicial District Court is 100 N. Broadway, Room 220, Tyler, Texas 75702; (903) 590-1634. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

13. All pleadings, process, orders, served upon Defendant in the state court action are attached to this Notice as Exhibit “A” as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

14. Defendant will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

### **III. REQUEST FOR JURY TRIAL**

15. Defendant hereby demands a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendant, Freer Trucking, Inc., respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Eastern District of Texas, Tyler Division, and for such other and further relief to which they may show themselves to be justly entitled in equity or law.

Respectfully submitted,

**FEE, SMITH, SHARP & VITULLO, L.L.P**

*/s/ MICHAEL P. SHARP*

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of January, 2022, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court for the Eastern District of Texas - Tyler Division, using the electronic case filing system of the Court. The electronic filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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*/S/ MICHAEL P. SHARP*

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**MICHAEL P. SHARP**